

FAIR EMPLOYMENT & HOUSING COMMISSION

455 GOLDEN GATE AVENUE, SUITE 10600
SAN FRANCISCO, CA 94102
(415) 557-2325 FACSIMILE (415) 557-0855
www.fehc.ca.gov



MINUTES 465th COMMISSION MEETING

November 14, 2006
California State Capitol Building
Room 126
Sacramento, California

PRESENT:

Chairman George Woolverton, Commissioners Linda Ng, Tamiza Hockenhull and Carol Freeman; and Commission staff Ann Noel, Caroline Hunt and Loc D. Tra; Deputy Attorney General Michael Sweeney; Department of Fair Employment and Housing (Department of DFEH) Director Suzanne Ambrose; and Department Staff Paul Ramsey, Erin Koch-Goodman and Lisa Campbell; and members of the public: Rachelle Hicks, Kate Sproul, Wendell Laidley, Gail Blanchard-Saiger, Marti Fisher, Carol Greenberg and Michael Korcуска.

Vice Chair Herschel Rosenthal participated telephonically for the harassment training regulations portion of the meeting only.

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to call the meeting to order at 10:00 a.m. [06-50]

OPEN SESSION**REVIEW OF AGENDA**

Chairman Woolverton accepted the agenda.

Chairman Woolverton suggested that Commissioner Hockenhull serve as Acting Vice Chairman when both he and Vice Chair Rosenthal are unable to attend the Commission meeting. Commissioner Hockenhull accepted.

REVIEW OF THE MINUTES

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to adopt the Minutes and Transactions of the 464th meeting as submitted. [06-51]

50th ANNIVERSARY PLANNING

ELAS Noel discussed the Commission's plans for the 50th Anniversary Celebration of the enactment of the Fair Employment and Housing Act (FEHA).

September 18, 2009 will mark the 50th anniversary of the enactment of FEHA, then called the Fair Employment Practices Act. This anniversary is an opportunity to celebrate civil rights with all three branches of California state government: the Administration, the Legislature, and the judiciary, as well as the public. FEHA's 50th anniversary gives the Commission the chance to look back and celebrate the past 50 years' civil rights' achievements, to look forward to what civil rights' challenges still await us, and to reaffirm the importance of civil rights with all Californians.

Commissioners and staff briefly discussed 50th anniversary planning. Each ALJ will work with subcommittees to tackle various aspects of the anniversary planning and we will ask each Commissioner to work with us. The subcommittees will primarily meet telephonically to save money but we will also plan some subcommittee meetings to coincide with our Commission meetings. Woolverton posed to Michael Sweeney, the Deputy Attorney General who attended the meeting for Louis Verdugo if it would be legal and ethical for Stockwell, Harris, Widom and Woolverton to give \$5,000 to the Commission for its 50th anniversary planning. Chairman Woolverton requested an opinion letter for the Commission file. Deputy Attorney General Sweeney replied that the FEHC needs to submit such request in writing to the Attorney General's office.

State and Consumer Services Agency (SCSA or Agency) did not approve the Commission's Budget Change Proposal (BCP) for seed money to fund preliminary planning for the event. However, Agency is working with the Commission on alternative funding for the celebration.

COMMISSIONERS' REPORTS

Commissioners and staff congratulated Chairman Woolverton on his reappointment to be Chairman of the Commission by Governor Arnold Schwarzenegger.

Commissioner Ng reported on an October 6, Sacramento conference on "Hate Crimes Awareness and Prevention Forum" organized by Commissioner Ng and the Organization of Chinese Americans.

ELAS Noel reported on her visit with Commissioner Rosenthal where, on the behalf of the Commission, she presented to him the Commission's framed Resolution thanking and commending Vice Chair Rosenthal for his exceptional work with the FEHC.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) ACTIVITY REPORT

ELAS Noel discussed the following items from the ELAS Activity Report:

2007-08 Budget: SCSA recommended approval of the FEHC's BCPs for the 2007-08 budget for Commission travel expenses and pay, for IT support for the FEHC website and other

“tech” issues, for ALJ training.

Upcoming Commission Meetings for 2007: The Commission has set tentative dates for FEHC meetings in 2007: February 13, April 3, May 8, September 18, November 6 and December 4, 2007. ELAS Noel suggested that the Commission hold the February 13 meeting in Los Angeles so that Commissioner Rosenthal could attend. However, neither Commissioner Hockenhull nor Commissioner Freeman could attend on that date unless the meeting was held in San Francisco. Thus, the Commission agreed to hold this meeting in SF, with the April 3, 2007 meeting to be held in Los Angeles. Locations for the remaining 2007 meetings will be set later in the year.

New Administrative Law Judges: The Commission announced that the top two candidates for the ALJ positions, Regina Brown and Joe Ragazzo, have both accepted. Ms. Brown began working for the Commission on November 1, 2006 and was attending a class at the National Judicial College the week of the Commission meeting. Mr. Ragazzo will begin working with the Commission in January 2007.

International Visitor Madame Carole Da Silva: On October 12, 2006, Commission staff welcomed distinguished French visitor, Carole Da Silva, the Director and Founder of the French “Association in Favor of Professional Integration” and a member of the French “High Commission for Integration.” The State Department’s International Visitor Leadership Program arranged the visit.

Ms. Da Silva was on a learning tour under the auspices of the State Department and the French government to learn about the United States laws on employment, housing and public accommodations “to help improve the situation of minorities in France.” All Commission staff met with Ms. Da Silva and her interpreter and shared information about FEHA, Commission hearings and personal experiences living in America.

Trainings: On behalf of the Commission ELAS Noel participated in two Rutter Group trainings on “Litigating Harassment Cases,” on October 24 and 26, 2006 in San Francisco and Los Angeles, respectively. At the sessions, ELAS Noel spoke about the Commission’s new sexual harassment training and education regulations. Commissioner Hockenhull, ALJs Hunt, Brown and Ragazzo all attended the San Francisco session.

DEPARTMENT’S REPORT

DFEH Director Ambrose reported on Department news, statistics, and other issues.

The Department issued 8,303 complaints, issued 9,276 immediate “right to sue” letters, and issued 89 accusations. Of the 8,303 complaints, 18% settled, 70% were closed for insufficient evidence or a finding of “no cause”, and 11% were withdrawn prior to completion of the investigation. Forty percent of these cases were housing, and 60% were employment.

The Department, in partnership with the State Bar of California, will conduct four “Train the Trainer” sessions about mandatory sexual harassment training (AB 1825) next year on March 16, September 11, December 4, and June 21 in Sacramento, San Francisco, Fresno, and Los

Angeles, respectively.

The Department is revising its Case Analysis Manual and will soon issue a chapter on disability. Soon to follow will be a chapter on the California Family Rights Act and pregnancy disability leave and discrimination. At the Commissioners' request, Ambrose agreed to provide the Commissioners and staff with copies of the Manual.

ATTORNEY GENERAL'S REPORT

Deputy Attorney General Michael Sweeney in the Civil Rights Enforcement Section (CRES) introduced himself to Commissioners and provided the Attorney General report in lieu of Senior Assistant Attorney General Luis Verdugo Jr. He reported on several cases that the CRES is litigating: Chamber of Commerce v. Bill Lockyer, DFEH v. MDG, Inc., Attorney General v. Kern and Santa Cruz Counties, and lawsuit and stipulation in the city of Stockton against a housing developer.

HARASSMENT TRAINING REGULATIONS

Commissioner Freeman recused herself from any participation for this portion of the meeting concerning the Commission's harassment training regulations at 11:10 a.m.

At 11:15 a.m., The Commission entered into a telephonic meeting with the additional location, Ken Edward Center, 1527 4th Street, Room 105, Santa Monica, CA 90401, available to the public. In attendance and participation at this location was Vice Chair Rosenthal.

The Commission discussed revisions of the Harassment Training Regulations, i.e., the *October 2, 2006, Revised Harassment Training and Education Regulations (without underlining and strikeout from the original December 16, 2006, proposed regulations)*.

Chairman Woolverton moved, Commissioner Rosenthal seconded, and the Commission voted 4:0 to adopt its October 2, 2006, proposed regulations as its final, proposed regulations. [06-52] Staff will now prepare a regulatory package to go to the Office of Administrative Law (OAL) for its review. Commission staff will submit the package to OAL by the beginning of December. OAL will have 30 days to review the package, and, if approved, will then submit the regulations to the Secretary of State. The regulations will be effective 30 days thereafter.

Commissioner Freeman rejoined the meeting at 11:20 a.m.

Prior to leaving the meeting, Vice Chair Rosenthal thanked the Commissioners and Commission staff for awarding him with the Commission's Resolution, which was hand delivered to his home by ELAS Noel.

The Commission ended its telephonic meeting with the Ken Edward Center location and resumed its regular meeting at the State Capitol at 11:25 a.m.

LEGISLATION

ELAS Noel reported that she met with Commissioner Adams on October 20, 2006 to discuss various tentative options for legislation for the Commission to sponsor the next legislative year. For the 2007 legislative year, they submitted initial ideas for rethinking damage awards under FEHA, joining with DFEH and AG's CRES to consider ways to streamline entry of judgment and enforcement of the FEHC's decisions, and amending Government Code section 12950.1 to include other forms of harassment in all parts of the AB1825 and lengthening the time required for training from two to three hours. Additionally, for the 2008 or 2009 legislative years, they discussed ideas for changing the Commission's name to the California Equal Rights Commission or the California Civil Rights Commission and working with the California Law Revision Commission to revise the FEHA and place all employment provisions in one part of the FEHA and all housing provisions in another part.

Chairman Woolverton suggested that the Commission create a legislative subcommittee to develop any legislative package that the Commission might pursue. Commissioners Hockenhull and Ng volunteered to be part of a legislative subcommittee to work on legislation with Commissioner Adams.

Julio Martinez, the Legislative Director for Assembly Member Judy Chu, gave the Commission a presentation on the legislative process, from the conception of an idea for legislation to working the bill through both houses of the Legislature, to the Governor signing the bill into law. Martinez provided the Commission and staff with legislative packets illustrating all stages of the legislative process.

PUBLIC COMMENTS

Wendell Laidley of New Media Learning spoke to the Commission about his continuing opposition to the Commission's "two hours means two hours" interpretation of the AB 1825 statute. He stated that he will pursue legislation to change this interpretation.

CLOSED SESSION

The Commission entered Closed Session at 12:15 p.m.

Only the Chairman, Commissioners, Deputy Attorney General Michael Sweeney, and Commission staff were present.

The Commission discussed writs, hearings and litigation and deliberated on pending cases.

a. Writs and Appeals

- (1) DFEH v. Los Angeles Fire Department (Killian)

(2) DFEH v. San Francisco BART (Bartley)

The Respondents in the above cases have requested the record, the first step in filing a writ.

b. Post-Decision

(1) DFEH v. Prunty's New Beginnings (Henson/Project Sentinel)

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 4:0 to award the attorneys representing complainant-intervener Project Sentinel 10 hours of attorney's fees at the "blended rate" of the two Project Sentinel attorneys for their work on this case. [06-53]

c. Administrative Adjudication: Pending Decisions

(1) DFEH v. Guardsmark (Sotnikova)

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 4:0 to adopt the proposed decision, which dismissed this sexual harassment employment discrimination case. [06-54]

(2) DFEH v. Brad Gollihar (Salter & Yarbrough)

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 4:0 to adopt the proposed decision, which dismissed this Ralph Act case. [06-55]

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to end Closed Session at 12:37 p.m. [06-56]

ADJOURNMENT

The Commission adjourned its meeting and the forum at 12:40 p.m.

Date: November 14, 2006

GEORGE WOOLVERTON
Chairman

ANN M. NOEL
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS
OF THE 465th COMMISSION MEETING
November 14, 2006
Sacramento, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 06-50 Approved calling the meeting to order.
- 06-51 Approved the Minutes and Transactions of the 464th meeting as submitted.
- 06-52 Voted 4:0 to adopt the Commission's October 2, 2006 proposed regulations as its final, proposed regulations.
- 06-53 Voted 4:0 to award the attorneys representing complainant-intervener Project Sentinel 10 hours of attorney's fees at the "blended rate" of the two Project Sentinel attorneys for their work on DFEH v. Prunty's New Beginnings (Henson/Project Sentinel)
- 06-54 Voted 4:0 to adopt the proposed decision in DFEH v. Guardsmark (Sotnikova)
- 06-55 Voted 4:0 to adopt the proposed decision in DFEH v. Brad Gollihar (Salter & Yarbrough)
- 06-56 Approved ending Closed Session and adjourning the meeting.

Prepared By

Loc D. Tra
Clerk of the Commission